* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 10, 2007
Date of Decision : May 29, 2007

\+ W.P. (C) 19789/2005 & CM No. 12786/2005

\# DR. NARESH PAL SINGH ..... PETITIONER
! Through : Ms. Richa Kapoor, Advocate.

versus

$ DELHI DEVELOPMENT AUTHORITY .... RESPONDENT
^ Through: Mr. Ajay Verma, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The short issue in this writ petition concerns the cost at which a demand letter in respect of flat No. A-189, (Second and Third Floor) Category III, Pocket A, Sarita Vihar, New Delhi, should be allotted to the Petitioner.

2. The Petitioner was allotted the said flat in a draw held on 7.3.2000. The Petitioner's case is that the cost prevalent on the date of the draw, i.e., March 2000, should be charged. The stand of the Respondent, Delhi Development Authority (DDA) is that the Petitioner was originally allotted a flat in Jasola, Pocket 8, and thereafter at Shekh Sarai, Pocket F. However, at the request of the Petitioner the locality was changed to Sarita Vihar. When the matter was referred to the competent authority, i.e., the Lt. Governor/Chairman, DDA, the request for change of locality was not approved. The delay in making

payment was also not approved. Therefore, the Petitioner's prayer cannot be granted.

3. The facts that are required to be recounted are that in the year 1985 the Respondent DDA floated the Self Financing Housing Scheme VI. On 22.7.1985 the Petitioner registered under the said Scheme. Later the Petitioner opted for conversion of his registration from Category II to Category III and sent the DDA a letter on 29.6.1989 enclosing the relevant documents. He also paid the appropriate charges. The request was accepted by the DDA. A letter of allocation bearing block dates, 26.12.1991 to 31.12.1991 allocating a flat at Jasola, Pocket 8 was sent to the Petitioner. The Petitioner was unable to accept this allocation and wrote to the DDA on 8.2.1992 requesting for cancellation. He paid Rs. 1,500 as cancellation/surrender charges. This request was accepted on 26.3.1992.

4. In the year 1993 the Petitioner was allocated a flat at Shekh Sarai Pocket F. However, the letter was returned to DDA as `undelivered'. On 3.9.1997, the Petitioner received a letter from the DDA asking him to submit proof of identification. The Petitioner by his letter dated 24.10.1997, while furnishing the documents asked to be submitted, again requested for the issuance of a demand letter. He pointed out that he had only recently learnt that a demand letter had been issued in respect of the Shekh Sarai flat in 1993 itself.

5. The Petitioner kept following up the matter and again renewed his request on 17.7.1998. He states that consequent to his attending a public hearing, he was advised by a DDA official to deposit part payment towards the flat. The Petitioner thereafter deposited Rs.

4,50,000 along with his letter dated 12.10.1998.

6. Meanwhile, the case of the Petitioner was placed before the Restoration Committee which approved it by its Minutes dated 14.5.1999. Yet no letter of allotment was issued to him. On 22.12.1999 the Petitioner requested for change of locality from Shekh Sarai to Sarita Vihar and stated that he was prepared to take the flat on any floor. On this request, orders were passed by the Vice-Chairman on 23.12.1999 following which a letter dated 16.2.2000 was written by the DDA to the Petitioner informing him that his request for change of location had been acceded to. The Petitioner learnt that in a draw held on 7.3.2000, the Sarita Vihar flat had been allotted.

7. When the Petitioner again followed up the matter for issuance of a demand letter, he was informed that for files pertaining to the SFS Category had been seized by the Central Bureau of Investigation (CBI) for investigation, and therefore the issuance of the allotment letter to the Petitioner was getting delayed. By a letter dated 27.12.2004 the DDA called the Petitioner for a meeting for certain clarifications. This the Petitioner provided. However, nothing happened thereafter. The Petitioner again attended a public hearing on 3.3.2005. The Petitioner was informed thereafter that his case was again placed before the Restoration Committee. Since his case had already been approved, the Petitioner filed the present writ petition on 4.10.2005.

8. While directing notice to issue on 5.10.2005 this Court directed status quo to be maintained as regards the Sarita Vihar flat.

9. The counter affidavit filed by the DDA states that the Lt.

Governor had not approved the allotment to the Petitioner of the Sarita Vihar flat with the following remarks:

> "Shri N.P. Singh is an applicant of the Sixth Self Financing Scheme which has since been closed. The change in locality from Seikh Sarai to Sarita Vihar was also done without the approval of the competent authority. Moreover, no cogent reason has been advocated by Shri N.P. Singh for the delay. In view of the request for condonation of delay cannot be accepted."

10. In the rejoinder filed by the Petitioner, apart from pointing to the notes on file, the Petitioner has referred to the Office Order dated 31.3.1999 of the DDA which lays down the period of delay in making payments that can be condoned and the authority which is permitted to condone such delay. According to the Petitioner as on the date of the approval of his case by the Vice-Chairman, i.e., 7.3.2000 the authority empowered to condone the delay of more than one year and six months was the Vice-Chairman. The Petitioner also refers to two similar cases where the delay has been condoned.

11. Appearing for the Petitioner, Ms. Richa Kapoor submits that in the instant case the requirement for restoration of cancelled allotments after a period of three years was governed by the March 1999 Resolution. She refers to the subsequent Office Order dated 12.6.2001, according to which there was no need to send the matter to the Lt. Governor if change of locality is within the same zone and to another order dated 27.6.2001 according to which where the allotment is made through general draw in any locality, the approval of the LG is not required. She points to the fact that Shekh Sarai and Sarita Vihar are under the same zone, and therefore, for the change

of locality there was no need to place the file before the Lt. Governor. As regards the delay in making payment, the policy made it clear that Vice-Chairman could approve the delay.

12. Mr. Ajay Verma, the learned counsel for the DDA states that the requirement of approval by the Lt. Governor was as per the policy prevalent in 2005. He tries to distinguish the present case from the two other cases referred to by the Petitioner with reference to the notes on file in respect of those cases. He submits that whatever was the applicable policy at the relevant point of time would have to be followed by the DDA.

13. The Petitioner has placed on record the notes on file obtained through an application made under the Right to Information Act. An important noting of 13.7.2004 acknowledges the fact that the demand letter was held up for nearly three to four years due to non-availability of documents. The note reads as under:

> "This is with reference to observations of DD(SFS) dated 22.6.04 (P.32/N). The report of Daftry as well as DA (R) has been obtained but the RR/AA which were reported to be in file No. F.175(269)/79/JL and F.125(782)/90 are not available.
>
> It is also mentioned that the category of flat was got changed by Sh. N.P. Singh from II to III and subsequently these papers were available in the above mentioned file which are readily not available and due to the non-availability of these documents issuance of 5th and final D/L is held up more than 304 years. Hence, if agree, we may seek approval of Commr. (H) for condonation of loss of RR/AA before file is referred to F/W for preparation of final D/L.
>
> Submitted please.

> The above note may please be seen for final orders. The detailed history is available from page 28 to 30/N.
>
> Sd/-
> 13.7.04”

14. The notes on file also indicate that as per the audit objection, change of locality was within the purview of the Vice-Chairman, DDA. The reply to the audit objection reads as under:

> “It has already been decided in so many cases where the change of locality within the same zone was done, VC DDA is competent in case allotment was made through general computerised draw.”

15. The narration of facts as well as the perusal of applicable policies reveal that in terms of the policy of the Respondent dated 1.6.2001, it was the Vice-Chairman who was the competent authority and there was absolutely no need to refer the above case to the Lt. Governor. On the issues of condonation of the delay as well as change of locality, the matter was rightly examined first by the Restoration Committee thereafter by the Grievance Redressal Committee. The Vice-Chairman had also granted his approval. The notings on file indicate that the price at which the restoration was sought to be made, was calculated as on 30.7.2004. In the written submissions filed on behalf of the Petitioner, it has been claimed that in terms of the policy dated 19.4.2002, the allotment has to be made on the basis of the current cost on the date of the draw in which the Sarita Vihar flat was allotted to the Petitioner. The admitted fact is that the Sarita Vihar flat was allotted in a draw held on 7.3.2000. The submission that the cost prevalent as on 4 months after the date of the draw should be the cost at which the flat should be allotted,

appears to be reasonable.

16. In that view of the matter, the writ petition is allowed. A direction is issued to the Respondent DDA to issue to the Petitioner an allotment-cum-demand letter in respect of Flat No. A-189(Second and Third Floor) Category III, Pocket A, Sarita Vihar, New Delhi with the cost calculated at the prevalent current cost as on 7.7.2000, without charging any interest, within a period of 4 weeks from today, and in any event not later than 30.6.2007. The demand letter will account for the payments already made by the Petitioner. If the Petitioner makes payment of the balance amount as indicated in the demand letter within the time stipulated, and subject to completion of any other formalities, the Petitioner will be put in possession of the flat within a period of 8 weeks thereafter.

17. Considering the long period for which the Petitioner had to wait for issuance of the allotment letter, the DDA is directed to pay costs of Rs. 5,000 to the Petitioner within a period four weeks from today, and in any event not later than 30.6.2007.

18. With these directions, the writ petition is allowed and the application is disposed of.

May 29, 2007 (S. Muralidhar)
ak Judge